THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

A.S.No.15 of 2006

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Dt:30-06-2010

Between :

Mr. V. Ramanjal Reddy & another

..Appellants

And

Smt. P. Indira Devi

.. Respondent

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

A.S.No.15 of 2006

JUDGMENT:

The respondent filed O.S.No.526 of 2001 in the Court of I Additional Senior Civil Judge, Ranga Reddy District, at L.B.Nagar, against the appellants for recovery of a sum of Rs.3,54,732/-, on the strength of two promissory notes, dated 02-04-1997; for a sum of Rs.1,40,000/- and Rs.1,00,000/-, respectively, dated 10-10-1997. She invoked the procedure under Order XXXVII C.P.C. On receipt of notice, the appellants filed I.A.No.2327 of 2003 under Rule 3(5) of Order XXXVII C.P.C., with a prayer to grant leave to defend themselves in the suit. The application was opposed by the respondent. Through its order dated 27-10-2004, the trial Court dismissed the I.A., following the judgment rendered by this Court in **Thota Kanakadurga Varaprasad Rao v. Madapati Chandra Sekhara Reddi**[1]**.** The appellants filed C.R.P.No.6514 of 2004 against the order in the I.A. That was dismissed on 25-03-2005, on the ground that the suit has since been decreed. Hence this appeal under Section 96 C.P.C.

Learned counsel for the appellants submits that the I.A.No.2327 of 2003, seeking leave to defend was dismissed by following the judgment rendered by this Court, referred to above, which stood overruled on 08-12-2003, by a Division Bench of this Court, through judgment in **Manepalli Udaya Bhaskara Rao v. Kanuboyina Dharmaraju**[2]. He contends that the suit was decreed without making any reference to the pleadings or defences.

Learned counsel for the respondent, on the other hand, submits that once the procedure under Order XXXVII C.P.C., was invoked, the trial Court is competent to adopt the summary procedure, and if the application filed by the appellants to defend the suit was rejected, there is no alternative, except to decree the suit.

As mentioned earlier, the respondent invoked the summary procedure under Order XXXVII C.P.C. Rule 1 of Order XXXVII C.P.C., enlists the category of suits, for which summary procedure can be invoked. Rule 2(3) denies the right to a defendant, to defend the suit,

unless he enters appearance and prays for leave. Rule 3 prescribes the procedure for appearance of the defendant. Sub-rule (5) thereof enables a defendant to seek leave after he receives the summons for judgment.

Soon after receiving summons for judgment, the appellants filed application under Rule 3(5) of Order XXXVII C.P.C., being I.A.No.2327 of 2003. It was rejected, simply by placing reliance upon a judgment rendered by this Court in **Thota Kanakadurga Varaprasad Rao's** case (1 supra).

A learned single Judge of this Court took the view in the said judgment, that, in case the defendant in a suit did not respond to a notice issued by the plaintiff, before filing the suit, it constitutes admission, and that would be a factor, to deny leave to defend. This was followed, and the I.A., was dismissed. Having dismissed the I.A.No.2327 of 2003, the trial Court proceeded to dispose of the suit itself, and summarily decreed it, without entering the merits, at all. The fact, however, remains that the judgment in **Thota Kanakadurga Varaprasad Rao's** case (1 supra), was overruled by a Division Bench of this Court, in **Manepalli Udaya Bhaskara Rao's** case (2 supra); on 08-12-2003 itself, and the same does not appear to have been brought to the notice of the trial Court, either when it dismissed the I.A., or decreed the suit. Therefore, a serious lapse has crept into the entire proceedings.

This Court would have undertaken adjudication, had there been evidence. Since the suit was decreed summarily, that facility is not available. The only alternative is, to remand the matter to the trial Court.

It is no doubt true that C.R.P.No.6514 of 2004 was filed against the order in I.A.No.2327 of 2003. However, that was dismissed on the sole ground that the suit stood decreed, subsequently. It was not dealt with on merits. Once it emerges that the I.A., was dismissed on the basis of a judgment, which is overruled, the order passed therein deserves to be set aside. It is accordingly set aside,

and the trial Court is directed to dispose of the I.A.No.2327 of 2003, afresh.

Since the suit is of the year 2001, it shall be given top priority for disposal, and the suit shall be disposed of, within a period of three months from the date of receipt of a copy of this order. Both the parties shall cooperate with the matter. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.30-06-2010.
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[1] 2002 (1) ALT 338
[2] 2004 (1) ALD 269 (DB)